

PROFESSIONAL SERVICES AGREEMENT

DATE: April 15, 2009

PARTIES: "CLIENT"

THE REDEVELOPMENT AGENCY OF THE CITY OF BURBANK, a public body, corporate and politic

Designated Official: Name: Susan M. Georgino
Title: Assistant Executive Director
Telephone: 818.238.5176

Mailing Address: 275 E. Olive Avenue
P. O. Box 6459
Burbank, CA 91510

THE "CONSULTANT"

THE KSD GROUP INCORPORATED

Representative: Name: Ken Defiebre.
Title: President
Telephone: (925) 827-0841

Mailing Address: 1200 Concord Avenue, Suite 170
Concord, CA 94520

TERM: Commencement date: July 1, 2009
Completion date: June 30, 2012

COST OF SERVICE: Not to exceed \$138,516

THIS AGREEMENT MUST BE FIRST EXECUTED BY THE CONSULTANT OR ITS REPRESENTATIVE AND APPROVED AS TO FORM BY THE CITY ATTORNEY BEFORE THE AGREEMENT MAY BE EXECUTED ON BEHALF OF THE REDEVELOPMENT AGENCY OF THE CITY OF BURBANK.

REQUESTS FOR A WAIVER OF TERMS MUST BE IN WRITING AND PRESENTED TO THE CITY ATTORNEY'S OFFICE AT THE TIME THIS AGREEMENT IS DELIVERED TO THE CITY ATTORNEY'S OFFICE FOR REVIEW AND APPROVAL AS TO FORM.

1.0 Services. Consultant, as an independent contractor, agrees to perform during the term of this Agreement, each and every service set forth on the "Scope of Services" attached to this Agreement as Exhibit "A." The initiation of service by the Consultant will commence upon receipt of a written notice from the Designated Official authorizing Consultant to proceed, and only to the extent of such authorization. The services of the Consultant shall include the making of all investigations, studies, and analysis required by the conditions involved in each request of the Designated Official.

2.0 Compensation. The Client shall pay for the services of Consultant either on a time-and-material basis or on a fixed-price basis, depending upon the agreed cost of the applicable service as indicated on the "Schedule of Compensation" which is set forth in Exhibit "B." No payment for expenses or labor shall be paid by Client unless it is related to a service, which is referred to in the Scope of Services. The cost of service designated on the first page of this Agreement may be increased by 10% of the original Cost of Services or \$10,000, whichever is less with the prior written approval of the Designated Official. Any additional increase in the cost of service designated on the first page of this Agreement must have the prior written approval and authorization of the City Manager.

3.0 Payment. If the service specified in the Scope of Services is to be paid for on a fixed-price basis, then Client shall pay for services of Consultant the total fixed price according to the progress payment schedule established in the Schedule of Compensation. If, however, payment is to be made on a time-and-material basis, then Consultant shall, at the end of each calendar month in which services are performed or expenses are incurred under this Agreement, and prior to the tenth day of the following month, submit to the Client a verified invoice prepared in the manner prescribed by the Client and the Designated Official. Client's payment to Consultant shall be made within thirty (30) days of either the date of completion of each phase as set forth in the progress schedule if Consultant's Compensation is a fixed price, or the date of Consultant's invoice if compensation is calculated on a time-and-material basis, whichever is applicable.

4.0 Standard of Skill. Consultant, and Consultant's staff, if any, is skilled in the professional calling necessary to perform the work agreed to be done pursuant to this Agreement. Client relies upon the skill of the Consultant, and Consultant's staff, if any, to do and perform such work in a skillful manner, and Consultant agrees to thus perform Consultant's work. The acceptance of Consultant's work by the Client shall not operate as a release of the Consultant from such standard of care and workmanship.

5.0 Independent Contractor. Consultant is retained and employed by Client only to the extent set forth in this Agreement, and the Consultant's relationship to the Client is that of an independent contractor. Consultant shall be free to dispose of all portions of Consultant's time and activities which Consultant is not obligated to devote to the Client in such a manner and to such persons, firms, or corporations as the Consultant sees fit except as expressly provided in this Agreement. Consultant shall not be considered to have the status of an employee under this Agreement or be entitled to participate in any insurance, medical care, vacation, sick leave, or other benefits provided for Client's officers or employees.

6.0 Indemnification. Consultant shall take all reasonable precautions to prevent the occurrence of any injury, including death, to any person or any damage to any property arising out

of the acts or omissions of the Consultant, its agents, employees, or subcontractors.

Consultant shall defend, indemnify and hold harmless the Client and its officers, agents, and employees, against any claim for personal injury, property damage, or wrongful death arising out of or as the result of any work by Consultant or the employees, agents, or subcontractors of the Consultant, in the performance of this Agreement.

7.0 Termination of Agreement. Either party may terminate this Agreement at any time during the term of the Agreement by giving the other party thirty (30) days notice in writing. This Agreement may be extended beyond the term only by the written agreement of both parties prior to the expiration of the term of the Agreement.

8.0 Safety Requirement. All work performed under this Agreement shall be performed in such a manner as to provide safety to the public and to meet or exceed the safety standards outlined by CAL-OSHA. The Client reserves the right to issue restraint or cease and desist orders to the Consultant when unsafe or harmful acts are observed or reported relative to the performance of the work under this Agreement. The Consultant shall maintain the work sites free of hazards to persons and property resulting from its operations. Any hazardous condition noted by the Consultant, which is not the result of his operations, shall immediately be reported to the Client.

9.0 Insurance. Consultant shall maintain the following insurance coverage throughout the term of this Agreement, and upon request Consultant shall show Client evidence of such coverage:

9.1 Automobile Insurance. If Consultant uses, or intends to use, a personal automobile in the performance of this Agreement, automobile liability insurance with limits of not less than \$100,000.00 per person and \$300,000.00 per accident for bodily injury and not less than \$25,000.00 per accident for property damage.

Waiver Approved:

City Attorney or designee

Management Services Director or designee

9.2 Workers' Compensation Insurance. Workers' Compensation Insurance and Employer's Liability Insurance on any employees of Consultant performing services under this Agreement. **This insurance cannot be waived, but does not apply if Consultant is a sole proprietor and provides a written statement to that effect.**

9.3 General Liability and Property Damage Insurance. Unless expressly waived and such waiver is evidenced by the signature of the requisite officers of the client designated in this paragraph, Consultant shall maintain general liability insurance and property damage insurance in the amount of \$1,000,000.00 combined single limit. When this coverage is required, the Client shall be named as an additional insured on a separate endorsement to the

insurance policy. The endorsement shall require the insurance company to provide Client a minimum of ten (10) days notice of the cancellation of the policy.

Waiver Approved:

City Attorney or designee

Management Services Director or designee

9.4 Errors and Omissions Insurance. Errors and Omissions Insurance which includes coverage for professional malpractice, in the amount of \$1,000,000.00. The policy shall provide for coverage of all claims occurring during the term of the policy notwithstanding the fact that the claim may be asserted subsequent to the expiration of the policy for a minimum period of three (3) years.

Waiver Approved:

City Attorney or designee

Management Services Director or designee

10.0 Miscellaneous Insurance Requirements.

10.1 Recovery from Consultant's Insurance. Consultant agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, the Consultant shall look solely to its insurance for recovery.

10.2 Failure to Secure. If Consultant at any time during the term of this Agreement, should fail to secure or maintain any insurance required under this Agreement, the Client shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the cost of the insurance premiums at the maximum rate permitted by law computed from the date written notice is received that the premiums have been paid. Such costs can be assessed by deducting such costs from any amounts due and payable to the Consultant as compensation under the terms of this Agreement.

10.3 Additional Insured. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as an additional insured and an additional insured named under this Agreement shall not be held liable for any premium or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute toward any loss or expense covered by the insurance provided by this policy. Proceeds from any policy or policies shall be payable to the Client primarily, and to the Consultant secondarily, if necessary.

10.4 Evidence of Insurance. If requested by Client, Consultant shall furnish Certificates of Insurance evidencing the required coverages or the original of the insurance policies for review by the Client or the Designated Official.

11.0 Work Product.

11.1 Deliverables. Consultant shall deliver to the Client the studies, plans, specifications, or other documents as are identified in the Scope of Services; and Consultant shall, upon completion of all work, submit to the Client all information developed in the course of the Consultant's services. Consultant shall, in such time and in such form as the Client may require, furnish reports concerning the status of services required under this Agreement. Consultant shall, upon request by Client and upon completion or termination of this Agreement, deliver to the Client all material furnished to Consultant by the Client.

11.2 Ownership. Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the Consultant pursuant to or in connection with this Agreement shall be the exclusive property of the Client.

11.3 Confidentiality.. Consultant may be granted access to information that is exempt from disclosure to the public (Government Code Section 6254 and 6254.16) and may contain "trade secrets" (see Government Code Section 6254.7) when it is necessary for Consultant to perform its obligations pursuant to this Agreement. If Consultant is granted such access to confidential information, Consultant shall not be considered to be a member of the public as that term is used in Government Code Section 6254.5.

Consultant shall not disclose, publish, or authorize others to disclose or publish, design data, drawings, specifications, reports, or other information pertaining to the projects assigned to Consultant by the Client or other information to which the Consultant has had access during the term of this Agreement without the prior written approval of the Designated Official during the term of this Agreement and for a period of two (2) years after the termination of this Agreement.

11.4 Records. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the Client or the Designated Official. The Consultant shall maintain adequate records on services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide access to the Designated Official or his designees at all proper times to such books and records, and gives the Designated Official or his designees the right to examine and audit such books and records and to make transcripts as necessary, and to allow inspection of all work, data, documents, proceedings, and activities related to this Agreement.

12.0 Assignment. This Agreement is personal to the Consultant. Any attempt at assignment by the Consultant shall be void unless approved in writing by the Designated Official. Consultant's services pursuant to this Agreement shall be provided by the Representative or directly under the supervision of the Representative and Consultant shall not assign another to supervise the Consultant's performance of this Agreement without the prior written approval of the Client, by and

through the Designated Official.

13.0 Miscellaneous Terms.

13.1 Nuisance. Consultant shall not maintain, commit, or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

13.2 Permits and Licenses. Consultant, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

13.3 Conflict of Interest. Consultant agrees to be familiar with and comply with all applicable federal, state, and local conflict of interest laws.

13.4 Waiver. A waiver by the Client of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement whether of the same or different character.

13.5 Notices. Any notice required by this Agreement to be given in writing to the persons, at the addresses specified on the first page of this Agreement. Either party may change the specified person or address at which it is to receive notices by so advising the other party in writing.

13.6 Mediation. The parties agree to submit all claims, disputes or other matters in question between the parties arising out of or relating to this Agreement or breach thereof to mediation prior to the institution of any litigation.

13.7 Cost of Litigation. If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing party shall be entitled to receive from the losing party all costs and expenses in such amount as the court may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.


13.8 Severability. If any part, term, or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of a federal, state, or local governmental having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected by such holding.

13.9 Governing Law. The terms of this Agreement shall be interpreted according to the laws of the State of California. Should litigation occur, venue shall be in the Superior Court of Los Angeles County.

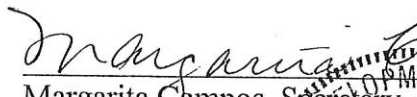
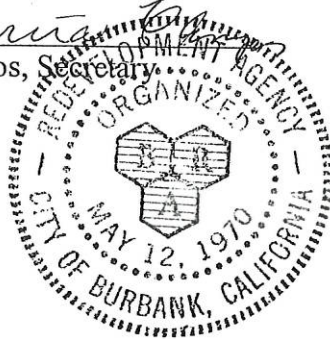
13.10 Integrated Contract. This Agreement represents the entire Agreement between the Client and the Consultant. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. In the event an inconsistency arises between any exhibit and any term of this Agreement, the terms of this Agreement shall prevail. This Agreement shall bind and inure to the benefit of the parties to this Agreement and any subsequent successors and assigns.

In recognition of the obligations stated in this Agreement, the parties have executed this Agreement on the date indicated above.

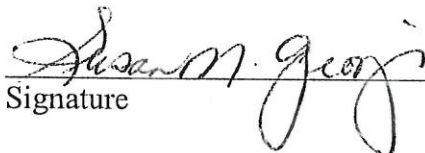
"CONSULTANT"


Signature
STEPHEN WALKER
Name (please print)
VICE PRESIDENT
Title

ATTEST:
Office of the City Clerk


Margarita Campos, Secretary


"CLIENT"


Signature
Susan M. Georgino
Name (please print)
Asst. Executive Director
Title

Approved as to Form and Legal Content:
Dennis A. Barlow, City Attorney


By: 
Signature
JOSEPH H. McDUGALL
Name (please print)
Sr. Asst. City Atty.
Title

EXHIBIT A

3/02/09

**CITY OF BURBANK
PROJECT CONSTRUCTION MANAGER – SCOPE OF WORK**

1. Organize and attend construction meetings with staff, HFH and the general contractor, at a minimum on a monthly basis.
2. Meet with the project construction manager, contractors, consultants and City staff as requested by the Community Development Department to track progress of project.
3. Take and maintain meeting notes and prepare meeting minutes for review and approval of all parties. Meeting notes should be prepared within one week of the meeting.
4. Attend building inspector and permit inspections. Help expedite any permit related issues arising out of building permit inspections.
5. Inspect project for quality control and progress.
6. Work with HFH to develop regular progress reporting structure.
7. Generate a monthly summary status report and discuss with City staff.
8. Review the project critical path time management schedule (Microsoft Project) generated by HFH.
9. Develop an action item list and track performance of the project with the goal of completing the project on time and within budget.
10. Report progress, issues and solutions to issues to City staff.
11. Expedite Request for Information (RFI's) as needed, identifying and offering solutions to any problems.
12. Establish and maintain Agency project documentation files and logs (including meeting minutes) such that each step throughout the project is clearly documented and each document is easily retrieved. Provided the City with completed electronic and hard copy files of all project generated documents for its use.
13. Perform other related project management services as deemed appropriate and necessary for the timely execution and completion of the project.

THE KSD GROUP INCORPORATED
CONSTRUCTION PROJECT MANAGEMENT

March 2, 2009

Jennifer Mack
Senior Redevelopment Project Manager
City of Burbank
150 North 3rd Street
Burbank, CA 91502

Via Email

Re: Habitat For Humanity Project

Dear Ms. Mack:

In response to multiple meetings with you as well as a conference call with Robert Dwelle of Habitat For Humanity (HFH), KSD proposes to provide construction management oversight services in connection with the construction of the Habitat For Humanity Project located at 1902 Keeler Street and 1722 - 1730 Elliot Drive. This proposal is based on the performance of similar oversight services KSD has provided to The Community Development Department of the City of Burbank at the recent Peyton-Grismer Project and is currently providing on Projects at 2406 Naomi and 275 Verdugo.

The Habitat For Humanity Project will consist of the renovation of one (1) single family house and construction of two (2) buildings comprising seven (7) townhouse style units. It is understood that the duration of this Project will be approximately one (1) year of preconstruction and fundraising and two (2) years of construction. You will note that the project fees are broken down into succinct one-year increments under the fee section of this proposal.

The scope of this proposal is to oversee the work under contract agreements between The Community Development Department Agency and HFH for the preconstruction and construction phases of the referenced project. The nature of our relationship would be as your project manager, to oversee the activities of HFH and to report to the Agency on all matters which impact project costs, schedule, quality of construction and compliance with the contract documents.

SERVICES PROVIDED

We propose to provide the services described in the following section, acting as your Owner's Representative, and paying particular attention to reporting on those issues to the Agency which represent risk to the project.

March 2, 2009
Jennifer Mack, City of Burbank
Habitat For Humanity Project Proposal
Page two

While I have attempted to augment the services as described in the attached SCOPE OF WORK letter, it should be understood that construction management is often a moving target and, as such, scope will change as the project progresses and new challenges are identified and undertaken. Whether specifically included in the scope as listed herein or not, KSD will "manage the process" within the fees as quoted as long as the scope remains consistent with this proposal and the schedule is not significantly extended. It is understood that the City of Burbank Community Development Department will provide a work space with internet access, copy facilities, telephone and reasonable clerical services for the KSD project manager during site visits.

SCOPE OF WORK

We will provide all of the services as listed in the attached Exhibit A, SCOPE OF WORK, dated March 2, 2009. These tasks are not repeated herein.

In addition to the tasks requested in Exhibit A, KSD will perform the following:

1. Review the Agency's budget and set up a Project Budget and Contract Cost Control to act as a disbursement and budget control for the Agency. Update the Cost Control with each scope change revision and each request for funds
2. Review invoicing and pay applications from HFH and consultants and make payment recommendations to the Agency. Maintain accurate records of project cost and project progress payments via regular updates of the Project Cost Control.
3. Review and process change order requests, extra work authorizations and any claims for extra cost or additional time by HFH or its contractors. Review take-offs and challenge unsubstantiated costs, assure compliance with contract documents and minimize exposure to unwarranted cost or claims.
4. Monitor the services and review reports of testing labs or special inspection agencies as required by code.
5. Perform the following construction administration services based on documentation furnished by HFH:
 - Review Requests for Information (RFIs), advise Agency of any unresolved issues which have an impact on project cost, schedule or quality.
 - Review contractor's Submittal and Shop Drawing Controls and responses and advise Agency of any issues which have an impact on project cost, schedule or quality.

March 2, 2009
Jennifer Mack, City of Burbank
Habitat For Humanity Project Proposal
Page three

6 Review HFH's close-out procedures at completion of the project:

- Verify the City of Burbank's certificates of occupancy and require contractor to file Notice of Completion
- Verify adequacy of as-built drawings, guarantees and warranties.
- Verify adequacy of operating and maintenance manuals.
- Verify lien waivers, recommend timing for release of punch list withholds and final retention

PROJECT TEAM

Steve Walker will be the principal in charge for both the preconstruction and construction phases of the project. Steve will report regularly to Burbank Community Development on all issues that affect project cost, design, quality and schedule.

During both preconstruction and construction, Ken Defiebre will assist Steve with estimating, scheduling, problem solving and action item follow up. During construction, Vic Santana, senior project manager, may assist Steve in the ongoing construction management and site meetings.

Lori Dagg, KSD's operations manager, will be responsible for technical support to the KSD management team during the entire project. Lori is responsible for all document control, including the Project Budget and Contract Cost Control; meeting minutes, notifications and agendas; preparation of Applications for Payment for consultants, contractor and vendors; Conditional and Unconditional Lien Waiver verifications; and the maintenance of all project files, documents and controls on the project.

PROJECT MANAGEMENT FEES

Preconstruction Services:	<u>Total</u>
July 1, 2009 through June 30, 2010 (12 Months):	
Hourly, with a budget of one thousand, nine hundred thirty dollars (\$1,930) per month.	\$ 23,160
Construction Services:	
July 1, 2010 through June 30, 2011 (12 Months):	
Hourly, with a budget of three thousand, six hundred dollars (\$3,600) per month	43,200
Construction Services:	
July 1, 2011 through June 30, 2012 (12 Months):	
Hourly, with a budget of three thousand, six hundred dollars (\$3,600) per month	<u>43,200</u>
Total Budget Fees	\$109,560

March 2, 2009
Jennifer Mack, City of Burbank
Habitat For Humanity Project Proposal
Page four

Project management fees are, of course, time driven. Based on our experience with similar projects, we expect to be able to manage the project within the budget fees as quoted unless the preconstruction phase or construction phase of the project is delayed for reasons beyond the control of The KSD Group, Inc.

For cost control, we will not invoice for fees in excess of the monthly budget for each phase with the understanding that an underbilling of fees in any month may roll over into subsequent months providing the aggregate monthly total is not exceeded.

Should the scope of our services be increased or the schedule extended, the KSD Group will not incur project costs, excluding reimbursables, that exceed the budget of \$109,560 without prior written authorization of the Agency.

REIMBURSABLES

KSD will cap the cost for travel, hotel and sustenance to \$300 per month during Preconstruction and \$600 per month during Construction.

There will be project-related reimbursables for which KSD may pre-pay and request reimbursement, such as blueprinting and copy services of project plans and documents, federal express, express mail or messenger service for rush order document delivery, and/or mileage and parking fees for meetings at consultants' offices or elsewhere as required. Project-related reimbursables will be charged at cost plus ten percent (10%).

PAYMENT POLICY

Services will be billed hourly in accordance with the attached KSD Group Hourly Rate Schedule. Invoices will be submitted by the tenth (10th) day of the month for services provided in the previous month, and payment is due by the thirtieth (30th) day of the invoice month. In consideration of payment within twenty (20) days of invoice date, KSD agrees to discount all invoices by ten percent (10%). Monthly services will be billed hourly less a ten percent (10%) discount, and the budgeted fees will not be exceeded without prior written authorization of Owner.

FORM OF CONTRACT FOR PROJECT MANAGEMENT SERVICES

Attached hereto is our Standard Form of Agreement for Construction Project Management Services, Proposed Scope of Services and Hourly Rate Schedule. Upon request, we can furnish you with financial statements and certificates of our public liability/property damage insurance and our professional liability (errors and omissions) insurance policies for your review.

March 2, 2009
Jennifer Mack, City of Burbank
Habitat For Humanity Project Proposal
Page five

• **PRINCIPAL INVOLVEMENT**

Steve Walker will not only be the principal in charge for the project but will be the lead project manager for both Preconstruction and Construction for all phases of the project.

QUALIFICATIONS FOR THE ASSIGNMENT

We believe you will find KSD to be uniquely qualified to be selected as your project manager. If you need any further information to make this decision, please contact Ken Defiebre at (925) 827-0841, cell (925) 487-4752, and email ken@ksdgroup.com, or Steve Walker at (925) 827-0841, cell (925) 980-2029, and email steve@ksdgroup.com.

We appreciate the opportunity to submit this proposal and look forward to the privilege of being selected to contribute to the successful development of the Habitat For Humanity Project.

Sincerely,

Ken Defiebre
President

/lr/b

Enclosures

cc: Steve Walker, w/attach
File, w/attach

Accepted By: _____

Title: _____

Date: _____

EXHIBIT B

SCHEDULE OF COMPENSATION

HOURLY RATE SCHEDULE

Effective September 1, 2008

PROJECT PERSONNEL

Principal
Vice President
Senior Project Manager
Project Manager
Operations Manager
Manager of Special Projects
Technical Support

Ken Defiebre
Steve Walker
Vic Santana
Scott Brafford
Lori Dagg
Lorna Kern Defiebre
Lonelle Bowen

HOURLY RATE SCHEDULE

<u>Personnel</u>	<u>Rate</u>
Principal	\$165.00 per hour
Vice President	\$140.00 per hour
Senior Project Manager	\$130.00 per hour
Project Manager	\$115.00 per hour
Operations Manager	\$ 95.00 per hour
Manager of Special Projects	\$ 95.00 per hour
Technical Support	\$ 65.00 per hour
Secretarial/Clerical	\$ 35.00 per hour

REIMBURSABLE EXPENSES

Reimbursable expenses shall include blueprinting and copy services, photographic services, transportation, mileage, bridge tolls and parking fees, out-of-town travel, meals and lodging when authorized in advance by Owner, Federal Express, messenger or express mail charges, and any other direct expenses incurred on behalf of the project. All reimbursable expenses are to be charged at cost plus ten percent.

COSTS NOT TO BE REIMBURSED

Non-reimbursable costs include normal postage, local and cellular telephone calls, facsimile charges, office overhead, general expenses or the cost of any services not specifically included unless authorized by Owner prior to the incurring of the cost.